

Draft 1 6/1/2007

R70. Agriculture and Food, Regulatory Services.

R70-540. Food Establishment Registration.

R70-540-1. Authority.

Promulgated under authority of Subsection 4-5-9(1)(a).

R70-540-2. Purpose.

The purpose of this rule is to set forth requirements for the registration of food establishments to protect public health and ensure a safe food supply.

R70-540-3. Scope.

(1) This rule provides procedures to register grocery stores, warehouses, and food processors and any other establishment meeting the definition of a food establishment as per Section 4-5-2(89).

(2) This rule:

(a) establishes definitions;

(b) requires an owner or operator of a food establishment to annually register with the department;

(c) categorizes food establishments;

(d) requires an inspection to determine compliance with R70-530 prior to granting a registration for new food establishments;

(e) establishes the requirements for: issuance, denial, conditional denial, revocation, suspension, and reinstatement for food establishments.

R70-540-4. Definitions.

For the purpose of this rule, the following words and phrases shall have the meanings indicated:

(a) "Department" means the Utah Department of Agriculture and Food, Division of Regulatory Services, or its representatives.

(b) "Farmer's Market" means ~~[a temporary or seasonal event at a specified location with multiple businesses that sell raw agricultural products and packaged processed foods.]~~ [a market where producers of food products sell only fresh, raw, whole, unprocessed, and unprepared food items directly to the final consumer.]

(c) "Food processing" means blending, mixing, packaging, acidifying, curing, drying or dehydrating, dry packing, thermal processing, reduced-oxygen packaging, cooking, baking, heating, grinding, churning, separating, distilling, extracting, slaughtering, cutting, fermenting, eviscerating, preserving, freezing, chilling, or otherwise manufacturing food products.

(d) "Food Processor" means an establishment that uses food processes indicated in R70-540-4(b). Examples include, but are not limited to, scratch bakery, dietary supplement manufacturer, candy factory, bottling plant, cannery, retail meat department, flour mill, ice plant, and low acid food processing establishment.

(e) "Inspection" means an on-site review of a food

establishment conducted by the Utah Department of Agriculture and Food to ensure compliance with all applicable laws and rules.

(f) "Letter of Authorization" is a written document from the owner of an inspected food establishment that states that another entity, that is a separate business, is using their food establishment to process a food product. This letter of authorization is valid for one calendar year. This does not include employees of the food establishment or other businesses subcontracted by the food establishment that may temporarily use their facility for food processing activities.

(g) "Warehouse" means a business whose primary purpose is to store or hold food.

R70-540-5. Registration Categories.

(1) Each food establishment shall belong to only one of the four categories that have been established.

(2) A food establishment with multiple processing areas at the same physical address and under the same ownership will be evaluated and placed in a single category.

(3) A separate registration is required for each business owner operating under a letter of authorization.

(4) Grocery stores offering food as defined in Section 4-5-2(6) to consumers shall be categorized based on the following schedule:

TABLE I

| | Inspectable Square Footage | Process Areas/Employees | Category |
|-----|-------------------------------|--------------------------------------|----------|
| (a) | less than 1000 | 4 or fewer employees | small |
| (b) | 1000-5000 | limited food processing | medium |
| (c) | 1000-50,000 | 2 or fewer food processing areas | large |
| (d) | greater than 50,000 | more than 2 food processing areas | super |

(5) Food or beverage manufacturing, processing, or packaging plants shall be categorized based on the following schedule:

TABLE II

| | Inspectable Square Footage | Process Areas/Employees | Category |
|-----|-------------------------------|--------------------------------------|----------|
| (a) | less than 1000 | 4 or fewer employees | small |
| (b) | 1000-5000 | limited food processing | medium |
| (c) | 1000-20,000 | 2 or fewer food processing areas | large |
| (d) | greater than 20,000 | more than 2 food processing areas | super |

(6) Cold or dry storage warehouses or other types of food storage facilities shall be categorized based on the following

schedule:

TABLE III

| | Inspectable Square Footage | Category |
|-----|----------------------------|----------|
| (a) | Less than 1000 | small |
| (b) | 1000-5000 | medium |
| (c) | 1000-50,000 | large |
| (d) | greater than 50,000 | super |

(7) A water vending machine owner or company shall be categorized as follows:

TABLE IV

| | Number of Water Vending | Category |
|-----|-------------------------|----------|
| (a) | ten or fewer | small |
| (b) | eleven or more | medium |

(c) as a grocery store as indicated in R70-540-5(4), Table I, (a)-(d) when their primary purpose is to vend water.

(8) For mobile vendors, each vehicle or truck that sells prepackaged, potentially hazardous food items shall be categorized as a small.

(9) A temporary or seasonal business at an individual location shall be typed as a grocery store as indicated in R70-540-5(4), Table I, (a)-(d).

(10) A farmer's market ~~[shall be typed as one grocery store as indicated in R70-540-5(4), Table I, (a)-(d).]~~ [shall be exempt from the registration fee pursuant to Title 4-5(2)(9)(b).]

(11) An establishment or operation calling itself a farmer's market, but which does not meet the definition of farmer's market in R70-540-4(b) shall be typed as one grocery store as indicated in R70-540-5(4), Table I, (a)-(d).]

R70-540-6. Annual Registration Period.

Annual registration applications and fees are due December 31 of each year for the upcoming calendar and all registrations expire on December 31 of each year.

R70-540-7. Registration.

(1) Registration fees are established according to Section 4-5-9. When the appropriate fee is not paid on or before December 31, the registration shall become delinquent and a penalty fee shall be added as per Section 4-1-6. Any new facilities opening between January 1 and October 31 will be required to register appropriately. New facilities registering after November 1 will be registered for the remainder of that year and the following calendar year. This does not apply to seasonal food establishments.

(2) Fees paid are nonrefundable.

(3) When a registration is suspended or revoked, no part of

the fees paid for a registration shall be returned to the owner or operator of a registered food establishment.

R70-540-8. Requirements.

- (1) The prerequisites for operation are as follows:
 - (a) a person may not operate a food establishment without a valid registration.
 - (b) a new registration is required within 60 days when ownership changes.
 - (c) registration is non-transferable.
 - (d) the Department may seek administrative or judicial remedies to achieve compliance with the laws and rules if a person fails to have a valid registration to operate a food establishment.
- (2) The owner or person-in-charge shall have the registration available for review upon request.
- (3) The owner of a food establishment may display the current annual registration.
- (4) The applicant should submit an application for a registration at least 30 calendar days before the date planned for opening a new or remodeled food establishment.
- (5) The person desiring to operate a food establishment shall submit to the department a written application for a registration on a form provided by the Department.
- (6) The qualifications and responsibilities of applicants are as follows:
 - (a) be an owner or representative of the food establishment;
 - (b) comply with the requirements of the Utah Food Protection Rule R70-530 and other applicable laws;
 - (c) agree to allow access to the food establishment during normal business hours as specified under Subsection 4-5-9(5)(a), provide required information; and
 - (d) pay the applicable registration fees at the time the application is submitted.
- (7) The contents of the application shall include:
 - (a) the name, billing address, business telephone number, and signature of the person applying for the registration;
 - (b) the name of the food establishment, federal tax identification number, physical location address, billing address, type of establishment (i.e. retail grocery, food processor, or warehouse), number and types of food processes, square footage of the food establishment, and the number of employees;
 - (c) information specifying whether the food establishment is owned by an association, corporation, individual, partnership, or other legal entity;
 - (d) a statement signed by the applicant that attests to the accuracy of the information provided in the application and agrees to provide other information as required by the Department.

R70-540-9. Issuance.

- (1) New, converted, or remodeled food establishments are required to submit plans as specified in the Utah Food Protection Rule R70-530-10, 10-2; the department shall issue a registration to the applicant after:

- (a) a properly completed registration form is submitted;
 - (b) the required plans, specifications, and information are reviewed and approved; and
 - (c) a preoperational inspection shows that the establishment is built or remodeled in accordance with the approved plans and specifications and that the establishment is in compliance with the Utah Food Protection Rule R70-530.
- (2) Registration for an existing food establishment will be renewed annually as stated in Subsection 4-5-9(2).
- (3) The Department shall issue a registration to a new owner of an existing food establishment after:
- (a) a properly completed application is submitted, reviewed, and approved;
 - (b) an inspection shows that the establishment is in compliance with the Utah Food Protection Rule R70-530 and;
 - (c) the appropriate fees are paid.

R70-540-10. Conditional Denial of Registration.

(1) If the registration is conditionally denied, the Department shall provide the applicant with a written notification within five business days that includes:

- (a) the specific reasons for the food establishment's registration denial; and
- (b) the applicant's right to appeal as provided for in Section R51-2.

(2) Upon receipt of the notice of conditional denial, the applicant may:

- (a) correct deficiencies and submit a description of the corrective actions; or
- (b) submit written information to rebut the deficiencies described in the notice; or
- (c) request an informal hearing, no later than ten business days after receipt of the notice.

(3) After receiving a written notification from the applicant stating that the deficiencies cited in the notice of conditional denial no longer exist, the Department shall:

- (a) evaluate the applicant's corrective actions and supporting documentation or the written rebuttal;
- (b) conduct an on-site re-inspection, if necessary, within three business days after receipt of written notification or correction;
- (c) issue the registration when the corrective action or rebuttal is sufficient;
- (d) deny the registration when the corrective action or rebuttal is not sufficient; or
- (e) issue a written notice of denial to an applicant who fails to respond to the notice of conditional denial.

R70-540-11. Denial of Registration.

(1) If the registration is denied, the Department shall provide the applicant with a written notification that includes:

- (a) the specific reasons for the food establishment's registration denial; and
- (b) the applicant's right to appeal as provided for in

Section R51-2.

R70-540-12. Suspension of Registration.

(1) The Commissioner may suspend a registration:

(a) whenever an inspection of the food establishment reveals that the establishment has critical or repeat violations that remain uncorrected beyond the negotiated period of time.

(b) when there exists in a food establishment an immediate and substantial hazard to public health, unless the hazard is immediately corrected. The Commissioner may temporarily suspend the registration of the food establishment without prior notice, informal hearing, and order the food establishment immediately closed by issuing an order in writing. An immediate and substantial hazard to the public health means any condition, based upon inspection findings or other evidence that:

(i) there is an imminent threat of food-borne illness or disease transmission; or

(ii) there is a hazardous condition including but not limited to critical control points without adequate control measures, contamination from wastewater, or non-potable water supply.

(c) in the event of a natural disaster, the Commissioner has the authority to order an establishment immediately closed if, in the opinion of the Commissioner the establishment cannot operate in a safe and sanitary manner. Conditions for immediate closure can include but are not limited to the following: No water supply, no electric power, flooding, or significant damage to the establishment. The Commissioner shall decide under what conditions the establishment will be allowed to reopen.

(d) whenever an owner or operator of a food establishment denies access to authorized personnel during normal business hours and does not allow them to conduct regulatory activities.

(2) The procedures for suspending the registration are as follows:

(a) the Commissioner shall notify the holder of the registration or the designated person-in-charge, in writing, when a registration is to be suspended;

(i) the Commissioner shall state specific reasons for which the registration is to be suspended; and

(ii) the Commissioner shall offer an opportunity to a person whose registration is suspended for an informal hearing as per R51-2-6, provided a written request for an informal hearing is filed with the Commissioner by the registration holder no later than ten business days, after receipt of the notice;

(b) the establishment shall be closed and shall remain closed until the registration has been reinstated;

(c) a person whose registration has been suspended may request a re-inspection. Upon receipt of the request, the Department will conduct the inspection within three business days. The registration may be reinstated if the inspection shows the violation(s) that led to the suspension is corrected;

(3) the Department may suspend the operations for one processing area of an establishment without suspending the registration for the entire food establishment if the reason for

suspension is isolated to that processing area and does not affect other areas of the establishment.

(4) if a food establishment voluntarily closes due to an immediate and substantial hazard to public health, the food establishment shall notify the Department prior to reopening.

(5) when a third administrative enforcement action is assessed against a registered establishment within any twelve-month period of time, the Department may initiate proceedings to suspend the registration.

(6) the registration shall be suspended and in effect until the conditions no longer exist or the Commissioner affirms, modifies, or rescinds the order as appropriate.

R70-540-13. Revocation.

(1) The Commissioner may revoke a registration whenever:

(a) the Commissioner is unable to conduct inspections in accordance with this chapter due to circumstances within the control of the registration holder or person-in-charge; or

(b) the registration has been suspended more than three times within a twelve-month period.

(2) The procedures for revocation are as follows:

(a) the Commissioner shall notify the holder of the registration or the designated person-in-charge, in writing, when a registration is to be revoked;

(i) the Commissioner shall state specific reasons for which the registration is to be revoked; and

(ii) the Commissioner shall offer an opportunity to a person whose registration is revoked for an informal hearing as per R51-2-6, provided a written request for an informal hearing is filed with the Commissioner by the registration holder, not later than ten business days after receipt of the notice.

(b) a person whose registration has been revoked may reapply thirty days after the date of revocation. Application fees for a new registration will apply.

R70-540-14. Exemptions.

For the purpose of granting registration fee exemptions the following applies:

(1) Food establishments that distribute food provisions directly to consumers without monetary consideration exchange will be exempt from food registration fees.

(a) These facilities may not conduct any type of food processing or reconditioning.

(b) Inspections will be conducted by UDAF to ensure food safety and the food establishments will be required to register annually with UDAF.

(2) Warehouses whose sole purpose is to distribute directly to food establishments that distribute food provisions directly to consumers without monetary consideration exchange may be exempt from registration fees.

KEY: food inspection

Date of Enactment or Last Substantive Amendment: ~~[March 18, 2005]~~ October 7, 2007

Authorizing, and Implemented or Interpreted Law: 4-5-2(5); 4-5-2(9)(b)(ii); 4-5-9(1)(a)